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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 (SAN JOSE DIVISION)

15 HORTONWORKS, Inc.,
16 Plaintiff,
17 v.
18 E-VENTURES, Kft.,
19 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
OF COPYRIGHT AND OTHER RELIEF**

JURY TRIAL REQUESTED

1 1. Plaintiff Hortonworks, Inc. (“Hortonworks”) files this Complaint for Declaratory
2 Judgment of non-infringement of copyright and for ownership of copyright pursuant to the
3 Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and to remedy unfair competition under Cal. Bus. & Prof.
4 Code § 17200.

5 2. This case concerns an improper attempt to assert proprietary rights in open source
6 software. Hortonworks brings this lawsuit to protect itself and the community at large from an
7 unfounded attack on its open source code.

8 3. Hortonworks is a prominent member, supporter, and leader in the open source
9 software community, employing many contributors to various open source software projects and
10 itself contributing a significant amount of code to the commons. Hortonworks is an important
11 sponsor of open source development—particularly in the “big data” arena. Its mission is to power
12 the future of data and accelerate business transformations for its customers by developing,
13 distributing, and supporting a new class of data management solutions built on open source
14 technology.

15 4. Like other prominent open source companies, Hortonworks sometimes acquires
16 smaller open source startups (often a small group of open source developers who have developed
17 open source software that complement Hortonworks’ own offerings). Such acquisitions provide
18 several benefits: they bolster Hortonworks’ stature in, and commitment to, the open source
19 community; they allow Hortonworks to leverage synergies between its own developers and the
20 acquired developers; and they give Hortonworks intellectual property interests in the acquired
21 software, which Hortonworks can then steward for the benefit of the open source community at
22 large.

23 5. Hortonworks recently acquired an open source company called SequenceIQ, which
24 comprises a small team of Hungarian developers who developed open source software that can be
25 used in conjunction with Hortonworks’ own offerings. SequenceIQ’s open source software had
26 been publicly available on the Internet for about a year prior to the closing of the acquisition, under
27 the terms of various open source licenses prominently displayed online alongside the source code.

1 6. Shortly after the details of this acquisition became public—including the
2 consideration that Hortonworks had paid to acquire SequenceIQ—a third-party Hungarian
3 corporation, unknown to Hortonworks at the time (and apparently lacking even a website),
4 approached Hortonworks claiming to own the copyrights in SequenceIQ’s open source software,
5 and further alleging that Hortonworks’ use of the open source software misappropriated trade
6 secrets, constituted unfair competition, and even constituted criminal infringement of copyright.
7 This corporation, Defendant e-Ventures, Kft. (“e-Ventures”), accused Hortonworks of various
8 forms of infringement and demanded millions of dollars for “resolution” of its claims.

9 7. But e-Ventures’ claims are baseless. First, e-Ventures has no copyright interest in
10 SequenceIQ’s open source code. SequenceIQ never assigned its rights in the open source code it
11 developed to e-Ventures, and the code was not created as a “work-for-hire” for e-Ventures. Second,
12 *even if* e-Ventures had a copyright interest in SequenceIQ’s open source code, any use of that code
13 by Hortonworks is lawful under the terms of the open source licenses pursuant to which that code
14 has always been licensed. The code has been developed in public and posted online alongside
15 prominently displayed open source licenses for well over a year. Hortonworks and the public are,
16 and have been, permitted to copy, use, modify, and redistribute that code subject to the terms of the
17 open source licenses.

18 8. Hortonworks has thus been forced to file the instant lawsuit to “quiet title” to its
19 open source software and obtain judicial confirmation that its actions with respect to SequenceIQ
20 and its code are entirely lawful.

21
22 **I. PARTIES**

23 9. Plaintiff Hortonworks, Inc. is a corporation organized under the laws of Delaware
24 with its principal place of business at 5470 Great America Parkway, Santa Clara, California 95054.

25 10. On information and belief, Defendant e-Ventures, Kft. is a corporation organized
26 under the laws of Hungary, with its principal place of business in Budapest, Hungary.

1 **II. JURISDICTION**

2 11. The instant litigation arises under the Federal Copyright Act, 17 U.S.C. §§ 101, *et*
3 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the California Business and Professions
4 Code, §§ 17200, *et seq.* Accordingly, this Court has subject matter jurisdiction over this action
5 pursuant to 28 U.S.C. §§ 1331, 1338, and 2201. This Court has supplemental jurisdiction over
6 Hortonworks' state law claim under 28 U.S.C. § 1367. This Court also has subject matter
7 jurisdiction over Hortonworks' state law claim pursuant to 28 U.S.C. § 1332, as there is complete
8 diversity between the parties and the amount in controversy exceeds \$75,000.

9 12. This Court has personal jurisdiction over Defendant e-Ventures because e-Ventures
10 has purposefully availed itself of this forum by committing wrongful intentional acts in this District,
11 expressly aimed at Hortonworks, who e-Ventures knows is a resident of this District, and caused
12 harm suffered by Hortonworks in this District.

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14 **III. VENUE**

15 13. Venue in this District is appropriate under 28 U.S.C. § 1391(b) and (c) because a
16 substantial part of the events or omissions giving rise to Hortonworks' claim occurred in this
17 District.

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19 **IV. INTRADISTRICT ASSIGNMENT**

20 14. This action is an Intellectual Property Action, thus it may be assigned on a district-
21 wide basis pursuant to Civil Local Rule 3-2(c).

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1 **V. FACTUAL ALLEGATIONS**

2 **A. APACHE HADOOP**

3 15. Apache Hadoop is a software framework that focuses on the distributed¹ storage and
4 processing of very large data sets.

5 16. Apache Hadoop is “open source” software, primarily licensed under a common
6 license known as “Apache License 2.0” (henceforth, the “Apache 2” license, attached hereto as
7 Exhibit 1).²

8 17. The primary developer of Apache Hadoop is the Apache Software Foundation, an
9 American 501(c)(3) non-profit corporation whose charitable mission is “to provide software for the
10 public good.”³ The Apache Software Foundation oversees the development of hundreds of different
11 open source software projects.⁴

12 **B. OPEN SOURCE SOFTWARE**

13 18. Open source software is software whose source code is available free of charge to
14 the public, which is free to use, copy, modify, and/or distribute the source code to anyone for any
15 purpose, typically subject to conditions such as providing notice of the applicable open source
16 license terms to downstream recipients.

17 19. Open source software is usually developed publicly in a collaborative manner, with
18 volunteer individuals and corporations contributing source code to open source projects over the
19 Internet. Many large, public corporations make use of, and/or actively contribute to, open source
20 software (including Apple, Google, and IBM). Some of the most widely used and well-known
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23 ¹ “Distributed” refers to the notion that Apache Hadoop is often deployed on clusters of networked
computers.

24 ² <https://www.apache.org/licenses/LICENSE-2.0>, last accessed on March 7, 2016. Apache Hadoop
25 contains subcomponents licensed under different open source licenses that are compatible with
Apache 2, meaning that they similarly permit free distribution of source code subject to basic
26 requirements such as attribution and notice.

27 ³ <https://www.apache.org/foundation/>, last accessed on March 7, 2016.

28 ⁴ *Id.*

pieces of software in the world are “open source,” including the Android operating system and the Linux kernel, which together power literally billions of devices.

20. Software becomes “open source” when it is licensed pursuant to an open source license. There are many different open source licenses with varying license provisions. One of the most commonly used open source licenses is the Apache 2 license. The Apache 2 license allows, *inter alia*, (1) free download and use of Apache-licensed software, in whole or in part, for personal, company internal, and/or commercial purposes; and (2) the use of Apache software in any software packages or distributions created by a licensee.⁵ The Apache Hadoop framework is licensed under the Apache 2 license.

C. GITHUB

21. One service commonly used for collaborative open source software development, and for publicly disclosing the licenses pursuant to which such code is available, is known as “GitHub.”⁶ GitHub provides a set of tools and services that are accessible over the Internet for source code development. This development is performed in an area called a “repository,” which is an area set aside for collaboration on a particular project. Public source code repositories on GitHub typically contain both source code and the license(s) under which that code is offered.

22. GitHub is free to use for public projects (*i.e.*, projects developed in repositories that are accessible to any member of the public).⁷ GitHub reports having over 12 million users and over 31 million repositories.⁸

23. GitHub provides many features, including revision control, source code management, bug tracking, feature requests, and task management. In particular, anyone with access to the Internet can download code from any public GitHub repository, view earlier versions

⁵ <http://www.apache.org/foundation/license-faq.html>, last accessed on March 7, 2016.

⁶ <https://github.com/>, last accessed on March 9, 2016.

⁷ <https://github.com/pricing>, last accessed on March 9, 2016.

⁸ <https://github.com/about/press>, last accessed on March 9, 2016.

1 of any such code, compare versions of such code, and obtain information about when the code was
2 submitted to GitHub and information identifying the user submitting such code. Typically, software
3 developers using public GitHub repositories publish the relevant license in the repository alongside
4 the corresponding code.

5 24. On information and belief, GitHub is operated by GitHub, Inc., a Delaware
6 corporation headquartered in San Francisco, California. Further on information and belief, GitHub's
7 primary web server through which members of the public and software developers interact with
8 source code, including by contributing and downloading such source code, is located in or near San
9 Francisco, California.

10 **D. HORTONWORKS AND ITS BUSINESS**

11 25. Hortonworks is a software company headquartered in Santa Clara, California. It
12 develops, distributes and supports a cutting-edge class of data management software solutions that
13 leverage the Apache Hadoop framework. Hortonworks' main products, Hortonworks Data Platform
14 ("HDP™") and Hortonworks DataFlow ("HDF™"), are both built entirely upon open source
15 software. Hortonworks has been called "a technology leader and ecosystem builder for the entire
16 Hadoop industry" by a prominent industry publication.⁹

17 26. The source code for HDP™ and HDF™ is freely available on the Internet for anyone
18 to use (under the terms of the Apache 2 license and other open source licenses).¹⁰ Hortonworks
19 makes such code publicly available because it believes that open source is the future of software
20 development, as it allows anyone in the world to innovate, invent, and instantly share source code
21 contributions with the worldwide open source community.

22 27. Hortonworks' business is built upon open source technology, the open source
23 community, and an open source ethic. To this end, Hortonworks generally provides its software
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26 ⁹ <http://hortonworks.com/press-releases/hortonworks-recognized-as-a-leader-in-the-enterprise-hadoop-solutions-industry-by-independent-research-firm/>, last accessed on March 8, 2016.

27 ¹⁰ <https://github.com/hortonworks>, last accessed on March 7, 2016.
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offerings free of charge and makes the source code to its software freely available to the public online.

28. Hortonworks generates revenue not via proprietary software licensing, but rather by selling support subscription offerings and professional services. Even on occasions when Hortonworks sells “premium” subscription agreements to provide customers with development input and the opportunity to work more closely with its developers, the code developed pursuant to such premium agreements is generally shared with the open source community via open source licensing of the code. Hortonworks employs a large number of source code developers who contribute to various open source projects.

29. Since it was founded as a startup in 2011, Hortonworks has grown rapidly to become a market leader. That growth has included the acquisition of other open source companies that share its values and open approach to technology.

E. CLOUDBREAK AND PERISCOPE

30. Cloudbreak and Periscope are open source software projects based on Apache Hadoop. From the start of each project, each has been developed as open source software, submitted to and publicly downloadable from the California-based GitHub service.

31. Both Cloudbreak and Periscope were developed by a team of Hungarian developers (the “Development Team”) led by an individual named János Szolt Mátyás. Development for the Cloudbreak source code commenced on or about May 10, 2014¹¹ and development for the Periscope source code commenced on or about July 8, 2014.¹²

¹¹ <https://github.com/sequenceiq/cloudbreak/commit/8a8ac3f906bdda5d50a4548106e877a8706a2483>.

¹² <https://github.com/sequenceiq/periscope/commit/959926371accaae371ab7fbbe90d2733c0c32fc>.

32. Both Cloudbreak and Periscope are licensed, and always have been licensed, under open source licenses including the Apache 2 license.¹³ All Cloudbreak and Periscope source code created by the Development Team is, and has always been, licensed under the Apache 2 license.

33. Indeed, Hortonworks first accessed and downloaded the source code for Cloudbreak and Periscope from GitHub in reliance on the open source licenses prominently displayed in the “LICENSE” links on the public GitHub repositories for these pieces of software.¹⁴ In line with these open source licenses, Hortonworks intended (and intends) to use the open source Cloudbreak and Periscope software within its open source HDP™ product.

34. On or about September 16, 2014, Mr. Matyas formed a Hungarian corporation named SequenceIQ Hungary Kft. Concurrently, the Development Team for Cloudbreak and Periscope became employees of SequenceIQ. Also on September 16, 2014, the members of the Development Team sold, assigned, and transferred all rights they held in the Cloudbreak and Periscope software to SequenceIQ.

35. On or about April 23, 2015, Hortonworks acquired SequenceIQ. This acquisition, and the fact that Hortonworks paid approximately \$10 Million in purchase consideration, was widely publicized in both the United States and Hungarian media, as well as publicly reported via the United States Securities and Exchange Commission.

36. This transaction, in addition to giving Hortonworks an interest in the copyright in the source code for Cloudbreak and Periscope, put Hortonworks in a position to leverage the expertise of the Development Team and the synergies between the Development Team and Hortonworks’ own software developers.

37. Prior to Hortonworks’ acquisition of SequenceIQ, it was permitted to use, modify, and redistribute Cloudbreak and Periscope under the terms of the open source licenses pursuant to which that software is and was licensed, just like any other member of the public. Hortonworks did

¹³ See <https://github.com/sequenceiq/cloudbreak/blob/master/LICENSE> (Cloudbreak license); see also <https://github.com/sequenceiq/periscope/blob/master/LICENSE> (Periscope license).

¹⁴ *Id.*

1 not need to acquire SequenceIQ or any additional rights from anyone in connection with using,
2 modifying, and redistributing Cloudbreak and Periscope.

3 38. Hortonworks now directly owns 19.37% of SequenceIQ Hungary Kft. The remaining
4 80.63% of SequenceIQ Hungary Kft. is owned by a company called SequenceIQ, Inc., a wholly-
5 owned subsidiary of Hortonworks.

6 **F. E-VENTURES AND ITS THREATS AGAINST HORTONWORKS**

7 39. On or about August 10, 2015, after Defendant e-Ventures learned that SequenceIQ
8 had been acquired for a substantial amount of money, e-Ventures instructed a California attorney to
9 contact Hortonworks. In this initial contact, e-Ventures asserted that it owned the copyrights in
10 Cloudbreak and Periscope pursuant to the “work-for-hire” doctrine of copyright law in view of
11 purported employment contracts between e-Ventures and the Development Team, and that
12 Hortonworks was infringing e-Ventures’ copyrights in Cloudbreak and Periscope.

13 40. E-Ventures demanded that Hortonworks pay e-Ventures’ principal millions of
14 dollars for “resolution” of its claims. E-Ventures threatened that if its extortionate demands were
15 not met, “messy and extensive litigation” would ensue. E-Ventures threatened to “file a lawsuit
16 claiming, *inter alia*, copyright infringement, misappropriation of property, misappropriation of trade
17 secrets, unfair competition, theft of trade secrets and criminal infringement of copyright, and
18 seeking both injunctive relief and damages” against Hortonworks.

19 41. In actuality, e-Ventures’ copyright ownership and infringement claims are baseless.
20 As an initial matter, the Development Team was never legally employed by e-Ventures. Rather, for
21 a portion of 2014, the members of the team had signed so-called “agency contracts” with e-
22 Ventures, akin to independent contractor agreements under United States law. These contracts:

- 23 • Included no provisions whatsoever addressing ownership or assignment of
- 24 intellectual property created by the Development Team;
- 25 • Specified no details of the work to be performed by the members of the
- 26 Development Team; and

- Gave e-Ventures no particular rights of instruction or control over the Development Team.

42. Moreover, the Development Team never worked out of e-Ventures' offices, and never took instructions or direction from anyone at e-Ventures. Neither Cloudbreak nor Periscope were made at the instance or the expense of e-Ventures. *Cf. Twentieth Century Fox Film Corp. v. Entm't Distrib.*, 429 F.3d 869, 878 (9th Cir. 2005) ("an independent contractor creates a work-for-hire when it was made at the instance and expense of the commissioning party.").¹⁵

43. In response to e-Ventures' demand, Hortonworks wrote a letter explaining to e-Ventures, *inter alia*, (1) that the Development Team was never legally employed by e-Ventures and that thus no "work-for-hire" was created under copyright law, and (2) that even if e-Ventures could establish a potential copyright ownership interest in Cloudbreak and/or Periscope, Hortonworks' use of this open source software has always been lawful because the software was and has always been licensed under the Apache 2 license.

44. In response, e-Ventures amplified its legal threats. E-Ventures rejected the contention that the Development Team was never legally employed by e-Ventures and that Cloudbreak and Periscope were licensed under the Apache 2 license.¹⁶ Further, e-Ventures

¹⁵ Indeed, during the pendency of the agency contracts between the members of the Development Team and e-Ventures, the source code for Cloudbreak and Periscope was hosted on the public website GitHub. The open source licenses for this code have been listed on GitHub alongside the code since long before Hortonworks' acquisition of SequenceIQ, and long before the agency contracts between e-Ventures and the members of the Development Team were terminated on November 2, 2014.

¹⁶ E-Venture's counsel expressed sheer disbelief that Hortonworks would pay money to acquire an open source company whose code was publicly available, or that open source code could have any dollar value at all. Hortonworks has attempted to explain that this is common in the world of open source software, but e-Ventures' counsel has rejected the idea that rights in freely available, open source code can be valuable to open source companies. *But see* <http://www.cnet.com/news/red-hat-scoops-up-jboss/>, last accessed on March 9, 2016 (noting Red Hat, Inc.'s "agreement to buy open-source company JBoss for at least \$350 million" and that "[w]ith the acquisition, Red Hat gains a popular open-source Java application server"); *see also* <http://www.pcworld.com/article/141409/article.html>, last accessed on March 9, 2016 (discussing Sun Microsystems' \$1 Billion acquisition of MySQL, whose flagship product was an open source database system).

1 threatened that in litigation, it would seek damages “far in excess” of the multi-million dollar
2 demand it had already made.

3 45. Over time, e-Ventures’ rhetoric and legal threats have become more strident. In
4 phone calls, e-Ventures’ counsel has alluded to a supposedly negative public relations impact that e-
5 Ventures’ apparently impending lawsuit will have on Hortonworks.

6 46. E-Ventures has informed Hortonworks that it is in the process of registering its
7 purported copyrights in Cloudbreak and Periscope and that it imminently plans to sue Hortonworks
8 for infringement of said copyrights.

9 47. Hortonworks and its subsidiary own the copyright in all portions of Cloudbreak and
10 Periscope source code created by the Development Team as a result of the Development Team’s
11 written assignment of rights in this code.

12 48. E-Ventures holds no valid copyright interest in either Cloudbreak or Periscope
13 because neither was created as a “work-for-hire” by the Development Team for e-Ventures, and the
14 Development Team never assigned any rights, nor agreed to assign any rights, in either software
15 program to e-Ventures.

16 49. Further, even if e-Ventures did have a valid copyright interest in the Cloudbreak
17 and/or Periscope source code, a claim that Hortonworks very much disputes, and even if,
18 counterfactually, Hortonworks and its subsidiary did not own the copyrights in the source code,
19 Hortonworks’ use of said code would be authorized and not infringing. The Cloudbreak and
20 Periscope source code is and has always been licensed as open source software, primarily under the
21 open source Apache 2 license, making it free for all, including Hortonworks, to use. Hortonworks is
22 and has at all relevant times been a lawful licensee of said code.

23 50. E-Venture’s repeated assertions and legal threats have improperly raised a
24 controversy surrounding Hortonworks’ rights to Cloudbreak and Periscope.
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COUNT I

(DECLARATORY JUDGMENT OF NO COPYRIGHT INFRINGEMENT, 17 U.S.C. §§ 101, ET SEQ.)

51. Hortonworks realleges and incorporates herein the allegations contained in Paragraphs 1 through 50, *supra*.

52. E-Ventures has claimed that it owns the copyrights in the Cloudbreak and Periscope source code. E-Ventures has further claimed that neither Cloudbreak nor Periscope are licensed under open source licenses including the Apache 2 license, and that Hortonworks is infringing e-Ventures' copyrights in this software. On this basis, E-Venture has threatened to bring a lawsuit against Hortonworks for copyright infringement.

53. An actual, present, and justiciable controversy has arisen between Hortonworks and e-Ventures concerning Hortonworks' right to use, copy, modify, and distribute the Cloudbreak and Periscope source code and related software, and is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

54. Hortonworks seeks declaratory judgment from this Court that, notwithstanding any copyright interest that e-Ventures claims to possess in the Cloudbreak or Periscope source code, Hortonworks is free to use, copy, modify, and distribute this source code pursuant to the Apache 2 license.

COUNT II

(DECLARATORY JUDGMENT OF OWNERSHIP OF COPYRIGHT)

55. Hortonworks realleges and incorporates herein the allegations contained in Paragraphs 1 through 54, *supra*.

56. An actual, present, and justiciable controversy has arisen between Hortonworks and e-Ventures as to whether e-Ventures has any copyright ownership interest in the Cloudbreak and Periscope source code and related software, and is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

57. Hortonworks seeks declaratory judgment from this Court that e-Ventures holds no copyright interest in either the Cloudbreak or Periscope source code or related software.

58. Hortonworks seeks declaratory judgment from this Court that Hortonworks owns the copyright interest in both the Cloudbreak and Periscope source code and related software via its subsidiary, SequenceIQ Hungary Kft.

COUNT III

(UNFAIR COMPETITION, CAL. BUS. & PROF. CODE § 17200, ET SEQ.)

59. Hortonworks realleges and incorporates herein the allegations contained in Paragraphs 1 through 58, *supra*.

60. e-Ventures has also, for example and without limitation, threatened to sue Hortonworks on objectively baseless claims—including trade secret claims concerning open source code which has been publicly available, and widely disseminated, for over a year—in an attempt to unfairly coerce Hortonworks into paying e-Ventures millions of dollars.

61. e-Ventures has made fraudulent claims of copyright ownership in an attempt to bolster its threats against Hortonworks.

62. Such acts have caused, and will continue to cause, irreparable and immediate injury to Hortonworks for which Hortonworks has no adequate remedy at law. Unless Defendant is restrained by this Court from continuing the acts alleged herein, these injuries will continue to occur.

63. The above-described acts and omissions of e-Ventures constitute unfair competition within the meaning of California Business and Professions Code § 17200, *et seq.*, in that they are unlawful, unfair, and/or fraudulent business practices.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Hortonworks requests that the Court enter a judgment:

- 3 1. Declaring that e-Ventures holds no copyright interest in either the Cloudbreak or
4 Periscope source code and related software;
- 5 2. Declaring that Hortonworks is free to use, copy, modify, and distribute the
6 Cloudbreak and Periscope source code and related software because this code is
7 open source code licensed under the Apache 2 license;
- 8 3. Enjoining and restraining e-Ventures from instituting any action against
9 Hortonworks for copyright infringement;
- 10 4. Enjoining and restraining e-Ventures from attempting to register any copyright claim
11 in the Cloudbreak and/or Periscope source code and related software;
- 12 5. Ordering restitution or injunctive relief as appropriate pursuant to Cal. Bus. & Prof.
13 Code §§ 17200, *et seq.*;
- 14 6. Awarding Hortonworks its reasonable costs and attorneys' fees in bringing this
15 action pursuant to 17 U.S.C. § 505, California Civil Procedure Code § 1021.5, or
16 otherwise; and
- 17 7. Granting Hortonworks such other relief as the Court deems just and proper.

18
19 Dated: March 11, 2016

Respectfully submitted,

20 FISH & RICHARDSON P.C.

21
22 By: /s/ Katherine Kelly Vidal
23 Katherine Kelly Vidal

24 Attorneys for Plaintiff
25 HORTONWORKS, INC.